

107TH CONGRESS  
1ST SESSION

# H. R. 1697

To amend the Clayton Act to ensure the application of the antitrust laws to local telephone monopolies; and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 3, 2001

Mr. CONYERS (for himself, Mr. CANNON, Mr. NADLER, and Mr. ISSA) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Clayton Act to ensure the application of the antitrust laws to local telephone monopolies; and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Broadband Competi-  
5       tion and Incentives Act of 2001”.

1 **TITLE I—PROTECTION OF**  
2 **BROADBAND SERVICES FROM**  
3 **CONTINUING MONOPOLIZA-**  
4 **TION**

5 **SEC. 101. AMENDMENT TO THE CLAYTON ACT TO INCLUDE**  
6 **MARKET POWER ENTRY TEST.**

7 The Clayton Act (15 U.S.C. 15 et seq.) is amended  
8 by adding at the end the following:

9 **“SEC. 28. BROADBAND TELECOMMUNICATIONS SERVICES.**

10 “(a) DETERMINATION BY ATTORNEY GENERAL.—A  
11 Bell operating company or an affiliate of a Bell operating  
12 company may not provide interLATA services in any of  
13 its in-region States under the authority of any amend-  
14 ments to section 271 of the Communications Act of 1934  
15 (47 U.S.C. 271) enacted after April 24, 2001, unless the  
16 Attorney General of the United States determines that  
17 such company or such affiliate does not have market  
18 power in the provision of wireline telephone exchange serv-  
19 ice in the State involved.

20 “(b) MARKET POWER.—For purposes of this section,  
21 a Bell operating company or an affiliate of a Bell oper-  
22 ating company shall be deemed to have market power in  
23 the provision of wireline telephone exchange service in the  
24 State involved if such company or such affiliate provides  
25 service to more than 85 percent of the business sub-

1 sscribers, or more than 85 percent of the residential sub-  
 2 sscribers, in such State at the time such company or such  
 3 affiliate requests that the Attorney General make a deter-  
 4 mination under subsection (a).

5 “(c) DEFINITIONS.—For purposes of this section:

6 “(1) AFFILIATE.—The term ‘affiliate’ means a  
 7 person that (directly or indirectly) owns or controls,  
 8 is owned or controlled by, or is under common own-  
 9 ership or control with, another person. For purposes  
 10 of this paragraph, the term ‘own’ means to own an  
 11 equity interest (or equivalent thereof) of more than  
 12 10 percent.

13 “(2) BELL OPERATING COMPANY.—The term  
 14 ‘Bell operating company’ has the meaning given  
 15 such term in section 3 of the Communications Act  
 16 of 1934 (47 U.S.C. 153).”.

17 **TITLE II—BROADBAND DEPLOY-**  
 18 **MENT INCENTIVES FOR SERV-**  
 19 **ICES TO ELIGIBLE RURAL**  
 20 **COMMUNITIES AND UNDER-**  
 21 **SERVED AREAS**

22 **SEC. 201. ELIMINATION OF DISCRIMINATORY TAXES ON**  
 23 **BROADBAND SERVICE PROVIDERS.**

24 (a) PROHIBITION.—No State or political subdivision  
 25 of a State may impose—

1 (1) discriminatory taxes on broadband services;

2 or

3 (2) a tax or fee imposed on telecommunications  
4 carriers or affiliates thereof, other than incumbent  
5 local exchange carriers and affiliates thereof, for the  
6 use of public rights-of-way that is greater than the  
7 tax or fee imposed on incumbent local exchange car-  
8 riers or affiliates thereof for their use of public  
9 rights-of-way.

10 (b) LIABILITIES AND PENDING CASES.—Subsection  
11 (a) shall not affect liability for taxes or fees accrued and  
12 enforced before the date of the enactment of this Act or  
13 to ongoing litigation relating to such taxes or such fees.

14 **SEC. 202. LOAN PROGRAM FOR ELIGIBLE RURAL COMMU-**  
15 **NITIES AND FOR UNDERSERVED COMMU-**  
16 **NITIES.**

17 (a) AUTHORITY TO MAKE DIRECT LOANS AND LOAN  
18 GUARANTEES.—The Attorney General of the United  
19 States may make direct loans or loan guarantees to eligi-  
20 ble broadband service providers in accordance with this  
21 section to finance the deployment of broadband services  
22 to eligible rural communities and to underserved areas.

23 (b) ELIGIBILITY REQUIREMENTS.—To be eligible to  
24 receive a loan or loan guarantee under this section, a  
25 broadband service provider shall submit to the Attorney

1 General an application containing such information and  
2 assurances as the Attorney General may require by rule,  
3 including—

4 (1) information demonstrating that such pro-  
5 vider is capable of delivering broadband service;

6 (2) a description of the proposed project to de-  
7 ploy broadband service to an eligible rural commu-  
8 nity or to an underserved area where broadband  
9 service is not otherwise generally available through-  
10 out such community or such area; and

11 (3) an assurance that such provider will meet  
12 the standards for service and area wide coverage es-  
13 tablished by the Attorney General.

14 (c) TERMS AND CONDITIONS.—Direct loans and loan  
15 guarantees made under this section—

16 (1) shall be made available in accordance with  
17 the requirements of the Federal Credit Reform Act  
18 of 1990 (2 U.S.C. 661 et seq.);

19 (2) in the case of direct loans and loans guar-  
20 anteed, shall bear interest at an annual rate of not  
21 more than 2 percent per annum; and

22 (3) shall be made for the longer of—

23 (A) a term of 30 years; or

24 (B) the useful life of the assets con-  
25 structed, reconstructed, or acquired with any

1           part of the proceeds of such loan or of the loan  
2           guaranteed.

3       (d) LIMITATIONS.—

4           (1) TECHNOLOGY NEUTRALITY.—In making di-  
5       rect loans and loan guarantees under this section,  
6       the Attorney General may not take into consider-  
7       ation the technology proposed to be employed by the  
8       applicants for such loans or such guarantees.

9           (2) SECURITY INTEREST.—The Attorney Gen-  
10      eral may take a security interest in assets or revenue  
11      streams, in connection with a direct loan or loan  
12      guarantee made under this section, of not more than  
13      the amount sufficient to cover the assets financed by  
14      such loan or such guarantee.

15      (e) AUTHORIZATION OF APPROPRIATIONS.—There is  
16      authorized to be appropriated to the Attorney General to  
17      carry out this section \$3,000,000,000 for fiscal years  
18      2002, 2003, 2004, 2005, and 2006.

19   **SEC. 203. DEFINITIONS.**

20      (a) IN GENERAL.—In this title:

21           (1) AFFILIATE.—Term “affiliate” means a per-  
22      son that (directly or indirectly) owns or controls, is  
23      owned or controlled by, or is under common owner-  
24      ship or control with, another person. For purposes  
25      of this paragraph, the term “own” means to own an

1 equity interest (or equivalent thereof) of more than  
2 10 percent.

3 (2) ASSESSMENT.—The term “assessment”  
4 means valuation for a property tax levied by a taxing  
5 State or political subdivision thereof.

6 (3) ASSESSMENT JURISDICTION.—The term  
7 “assessment jurisdiction” means a geographical area  
8 in a State used in determining the assessed value of  
9 property for ad valorem taxation.

10 (4) BROADBAND SERVICE.—The term  
11 “broadband service” includes, without regard to any  
12 particular transmission medium or technology, high-  
13 speed, switched, broadband telecommunications ca-  
14 pable of delivering not less than 1.5 megabits of  
15 data per second to the user and 128,000 bits of data  
16 per second from the user that enables users to origi-  
17 nate and receive high-quality voice, data, graphics,  
18 and video telecommunications.

19 (5) COMMERCIAL BUSINESS.—The term “com-  
20 mercial business” means a business, other than a  
21 broadband service provider, devoted to a commercial  
22 use.

23 (6) COMMERCIAL PROPERTY.—The term “com-  
24 mercial property” means property, other than prop-

erty owned by a broadband service provider, devoted to a commercial use.

(7) DISCRIMINATORY TAX.—The term “discriminatory tax” means any tax imposed by a State or political subdivision of a State on a broadband service provider that—

(A) uses an assessment of property owned by broadband service providers at a value that has a higher ratio to the true market value of the broadband service provider’s property than the ratio that the assessed value of other commercial property in the same assessment jurisdiction has to the true market value of the other commercial property value;

(B) uses an assessment of property owned by broadband service providers at a value that encompasses factors other than tangible assets, such as intangible assets and a going concern component, and bases the assessed value of other commercial property on a local assessment process of only tangible assets;

(C) is not generally imposed and legally collectible by such State or such political subdivision on commercial businesses; or



1 (D) is imposed without 180 days advance  
2 notification of the imposition of such tax.

3 (8) ELIGIBLE RURAL COMMUNITY.—The term  
4 “eligible rural community” means any census tract  
5 which—

6 (A) is not within 10 miles of any incor-  
7 porated or unincorporated place containing  
8 more than 25,000 people, and

9 (B) is not within a county or county equiv-  
10 alent which has an overall population density of  
11 more than 500 people per square mile of land.

12 (9) INCUMBENT LOCAL EXCHANGE CARRIER.—  
13 The term “incumbent local exchange carrier” means,  
14 with respect to an area, the local exchange carrier  
15 that—

16 (A) on the date of enactment of this Act,  
17 is providing telephone exchange service in such  
18 area; and

19 (B)(i) is deemed to be a member of the ex-  
20 change carrier association pursuant to section  
21 69.601(b) of title 47 of the Code of Federal  
22 Regulations, as in effect on such date; or

23 (ii) on or after such date, is a successor or  
24 assign of a member described in clause (i).

1           (10) TAX.—The term “tax” has the meaning  
2       given such term in section 1104 of the Internet Tax  
3       Freedom Act (47 U.S.C. 151 note).

4           (11) TELECOMMUNICATIONS CARRIER.—The  
5       term “telecommunications carrier” has the meaning  
6       given such term by section 3(44) of the Communica-  
7       tions Act of 1934 (47 U.S.C. 153 (44)), but—

8               (A) includes all members of an affiliated  
9       group of which a telecommunications carrier is  
10      a member, and

11              (B) does not include a commercial mobile  
12      service carrier.

13           (12) UNDERSERVED AREA.—The term “under-  
14      served area” means any census tract which is lo-  
15      cated in—

16               (A) an empowerment zone or enterprise  
17      community designated under section 1391 of  
18      the Internal Revenue Code of 1986;

19               (B) the District of Columbia Enterprise  
20      Zone established under section 1400 of such  
21      Code;

22               (C) a renewal community designated under  
23      section 1400E of such Code; or

24               (D) a low-income community designated  
25      under section 45D of such Code.

1       (b) DESIGNATION OF CENSUS TRACTS.—The Sec-  
2   retary of the Treasury shall, not later than 90 days after  
3   the date of the enactment of this Act, designate and pub-  
4   lish those census tracts meeting the criteria described in  
5   paragraphs (8) and (12) of subsection (a).

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